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June 30, 2000

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: *Generic Docket to Establish UNE Prices for Lines Sharing per FCC 99-355, and
Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123.*
Docket No. 00-00544

Dear David:

Please find enclosed the original and thirteen copies of the a Petition to Intervene filed on behalf of BlueStar Networks, Inc. and Covad Communications Company in the above-captioned docket along with a check in the amount of \$25.00 for each filing. Also enclosed are Comments filed on behalf of BlueStar and Covad. Copies have been forwarded to all parties.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/nl
c: Parties
Attachment

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93405

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

REC'D TN
REGULATORY AUTH.
JUN 30 PM 4 06
OFFICE OF THE
DEPUTY SECRETARY

**In re:)
Generic Docket To Establish UNE Prices)
for Line Sharing Per FCC 99-355, and)
Riser Cable and Terminating Wire as)
Ordered in TRA Docket 98-00123)**

Docket No. 00-00544

PETITION OF BLUESTAR NETWORKS, INC.

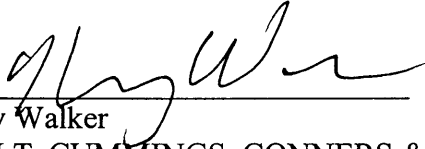
On May 9, 2000, the Tennessee Regulatory Authority ("Authority") opened this docket for "the purpose of establishing UNE prices for line sharing pursuant to FCC 99-355 and prices for riser cable and terminating wire as ordered in TRA Docket 98-00123."

BlueStar Networks, Inc. ("BlueStar"), a certified CLEC and provider of digital subscriber line ("DSL") services petitions to intervene, pursuant to T.C.A. § 4-5-310, in this docket. As a holder of such certificate and as a provider of DSL services, BlueStar has legal rights, duties, privileges, immunities, and other legal interests that will be affected by and determined in the above-captioned proceeding. BlueStar, the largest DSL provider based in Tennessee, is particularly concerned about the recurring and nonrecurring rates charged by BellSouth for elements necessary to provide DSL services. Allowing this intervention is in the interests of justice and will not impair the orderly and prompt conduct of this proceeding. BlueStar, therefore, seeks to intervene and participate as its interests may appear.

BlueStar requests the Authority to grant its intervention petition, to participate in this proceeding with all attendant rights and responsibilities, to receive copies of any notices, or orders, or any other dockets filed herein, and to have such other, further and general relief as the justice of its causes may entitle it to receive.

A proposed order is attached for the consideration of the Authority.

Respectfully submitted,

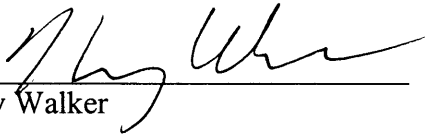


Henry Walker
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414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219

Counsel for BlueStar Networks, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, via U.S. Mail, postage prepaid, to Guy M. Hicks, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201 on this 30th day of June, 2000.



Henry Walker

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Generic Docket To Establish UNE Prices)	
for Line Sharing Per FCC 99-355, and)	Docket No. 00-00544
Riser Cable and Terminating Wire as)	
Ordered in TRA Docket 98-00123)	

**ORDER GRANTING PETITION TO INTERVENE
OF BLUESTAR NETWORKS, INC.**

Upon the petition of BlueStar Networks, Inc. ("BlueStar") to intervene pursuant to T.C.A. § 4-5-310 in the above-captioned proceeding, the Authority finds that BlueStar has a legally recognizable interest in the outcome of the proceeding and that granting the petition will not impair the interests of justice or the prompt and orderly conduct of the proceeding. The petition to intervene is therefore granted.

It is so ORDERED.

CHAIRMAN

DIRECTOR

DIRECTOR

ATTEST:

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Generic Docket To Establish UNE Prices)	
for Line Sharing Per FCC 99-355, and)	Docket No. 00-00544
Riser Cable and Terminating Wire as)	
Ordered in TRA Docket 98-00123)	

PETITION OF COVAD COMMUNICATIONS COMPANY

On May 9, 2000, the Tennessee Regulatory Authority ("Authority") opened this docket for "the purpose of establishing UNE prices for line sharing pursuant to FCC 99-355 and prices for riser cable and terminating wire as ordered in TRA Docket 98-00123."

Covad Communications Company ("Covad"), a certified CLEC and provider of digital subscriber line ("DSL") services petitions to intervene, pursuant to T.C.A. § 4-5-310, in this docket. As a holder of such certificate and as a provider of DSL services, Covad has legal rights, duties, privileges, immunities, and other legal interests that will be affected by and determined in the above-captioned proceeding. Covad is particularly concerned about the recurring and nonrecurring rates charged by BellSouth for elements necessary to provide DSL services. Allowing this intervention is in the interests of justice and will not impair the orderly and prompt conduct of this proceeding. Covad, therefore, seeks to intervene and participate as its interests may appear.

Covad requests the Authority to grant its intervention petition, to participate in this proceeding with all attendant rights and responsibilities, to receive copies of any notices, or orders, or any other dockets filed herein, and to have such other, further and general relief as the justice of its causes may entitle it to receive.

A proposed order is attached for the consideration of the Authority.

Respectfully submitted,

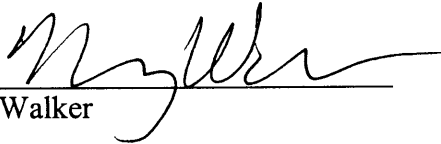


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Counsel for Covad Communications Company.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, via U.S. Mail, postage prepaid, to Guy M. Hicks, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201 on this 30th day of June, 2000.



Henry Walker

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Generic Docket To Establish UNE Prices)	
for Line Sharing Per FCC 99-355, and)	Docket No. 00-00544
Riser Cable and Terminating Wire as)	
Ordered in TRA Docket 98-00123)	

**ORDER GRANTING PETITION TO INTERVENE
OF COVAD COMMUNICATIONS COMPANY**

Upon the petition of Covad Communications Company ("Covad") to intervene pursuant to T.C.A. § 4-5-310 in the above-captioned proceeding, the Authority finds that Covad has a legally recognizable interest in the outcome of the proceeding and that granting the petition will not impair the interests of justice or the prompt and orderly conduct of the proceeding. The petition to intervene is therefore granted.

It is so ORDERED.

CHAIRMAN

DIRECTOR

DIRECTOR

ATTEST:

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Generic Docket To Establish UNE Prices)	
for Line Sharing Per FCC 99-355, and)	Docket No. 00-00544
Riser Cable and Terminating Wire as)	
Ordered in TRA Docket 98-00123)	

**COMMENTS OF BLUESTAR NETWORKS, INC. AND
COVAD COMMUNICATIONS COMPANY**

BlueStar Networks, Inc. ("BlueStar") and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") request that the Tennessee Regulatory Authority ("Authority") establish interim and permanent rates for the high frequency spectrum unbundled network element ("Line Sharing UNE") and for riser cable and network terminating wire ("NTW") subloops. In addition, BlueStar and Covad encourage the Authority use this opportunity to set interim and permanent rates for Unbundled Cooper Loops ("UCLs"), access to loop make-up,¹ and loop conditioning,² all of which are critical to rapid expansion of DSL throughout Tennessee. The issue of loop rates and access to loop make-up and conditioning are closely related and the Authority can most efficiently use its time by addressing these together in

¹ BellSouth is required to provide competitive local exchange carriers ("CLECs") with electronic access to loop make-up information contained in any and all their back office systems, including information about whether the loop is fiber or copper, the length of the loop, and the presence and location of load coils, repeaters, bridged tap, and digital loop carrier systems that may interfere with the loop's ability to support DSL.

² Loop conditioning is a routine part of BellSouth maintenance and provisioning of its outside plant. Loop conditioning essentially means removing load coils, bridged tap, repeaters and other devices that may interfere with DSL service.

this proceeding, in effect creating a single xDSL cost proceeding.³ BlueStar and Covad respectfully request that the Authority address these issues by immediately setting reasonable interim prices, which will be subject to true-up once the Authority concludes its review of permanent prices for these UNEs, subloops, and related issues.

I. INTRODUCTION

Both BlueStar and Covad have received authority from the Authority to provide telecommunications services throughout the State of Tennessee. Each company provides high-speed Internet and network access primarily through digital subscriber line (“DSL”) telecommunications services. DSL technology continues to be extremely attractive to customers, who include some of the nation’s preeminent technology companies and Internet service providers. DSL provides a lower cost and/or faster, alternative to T1, ISDN, and other high speed Internet connections offered by incumbent local exchange carriers (“ILECs”). In fact, BlueStar and Covad have earned their initial success because both companies offer a superior product – a DSL service that works much better, much faster, and at a lower cost than competing services offered by BellSouth. The DSL connection is described as “always on” because there is no need to dial a phone number as one does with a traditional modem connection. Likewise, because the connection is “always on,” DSL customers never have to wait for Internet access or run the risk of being knocked off their Internet service. As facilities-based companies, both BlueStar and Covad have made significant investments in equipment and personnel in Tennessee.

³ The “x” in “xDSL” is a placeholder for various types of DSL provided, including ADSL (Asymmetric Digital Subscriber Lines), SDSL (Symmetric Digital Subscriber Lines), and IDSL (ISDN Digital Subscriber Lines).

Both BlueStar and Covad seek to offer DSL service to small and medium-sized businesses as well as residential consumers of high speed Internet access services. To do so, BlueStar and Covad must obtain the UNEs necessary for their businesses from BellSouth. Indeed, BlueStar and Covad combined have purchased hundreds of thousands of dollars in UNEs in Tennessee to provide these services. BlueStar and Covad, however, have had to pay exorbitant, non-TELRIC-based prices – prices that ranged from 18 to 37 times higher than rates for similar network elements in other regions of the country. By imposing these high prices and by delivering consistently poor performance, BellSouth has successfully delayed and degraded BlueStar's and Covad's ability to deliver service to Tennessee consumers.

On May 9, 2000, the Authority opened the present docket to set permanent rates for the Line Sharing UNE, the riser cable element and the network terminating wire element. Without careful monitoring of prices, BellSouth has every incentive to drive competitors out of Tennessee to preserve their absolute control of the local telecommunications markets. To ensure that all Tennessee consumers obtain the benefits of advanced services such as DSL, the Authority must ensure that BellSouth charges nondiscriminatory rates for the Line Sharing UNE, the riser cable and NTW elements, and for UCLs, loop make-up and loop conditioning, all of which enable DSL providers to deliver high speed service to the widest range of customers.

II. TELRIC-BASED INTERIM AND PERMANENT PRICES FOR LINE SHARING AND RISER CABLE/NETWORK TERMINATING WIRE WILL PROMOTE RAPID DEPLOYMENT OF DSL IN TENNESSEE

Prices for the Line Sharing UNE and the riser cable and NTW elements must be set based on total element long-run, incremental cost ("TELRIC") pricing principles. TELRIC prices are

based on the forward-looking costs of providing elements, assuming that ILECs employ the most advanced technologies available. Both the Federal Communications Commission (“FCC”) and this Authority have held that rates for UNEs and other network elements must be consistent with FCC’s TELRIC methodology.⁴ Therefore, any interim and permanent prices for the UNEs and other elements set by this proceeding must follow the TELRIC-based cost methodology, as adjusted by the Authority in Docket No. 97-01262.

In these initial comments, BlueStar and Covad will explain the policy considerations that should guide the Authority in this proceeding. After BlueStar and Covad have had an opportunity to review BellSouth’s cost studies and proposed rates, we will provide a detailed proposal for permanent rates.

A. Line Sharing UNE

On November 18, 1999, the FCC ordered that ILECs such as BellSouth provide BlueStar, Covad and other CLECs with access to the high frequency portion of the loop for provisioning of xDSL services as a UNE. The ability to offer customers DSL service on their existing phone lines is a central aspect of Covad’s business plan. The purpose of requiring ILECs to make Line Sharing arrangements available is to promote competition for advanced services and to encourage the deployment of advanced telecommunications capability to all Americans. In the FCC’s words:

The record shows that lack of access to the high frequency portion of the local loop would materially raise competitive LECs’ cost of providing xDSL-based

⁴ See, e.g., *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98*, FCC 99-355 (rel. Dec. 9, 1999) (“*Third Report and Order*”); *Interim Order on Phase I of Proceeding to Establish Prices for Interconnection and Unbundled Network Elements*, Docket No. 97-10262 (Jan. 25, 1999).

service to residential and small business users, delaying broad facilities-based market entry, and materially limiting the scope and quality of competitors' service offerings. Moreover, access to the high frequency portion of the loop encourages the deployment of advanced telecommunications capability to all Americans as mandated by section 706 of the 1996 Act. Because some residential and small business markets may lack the economic characteristics that would support competitive entry in the absence of access to the high frequency spectrum of a local loop, it is clear that spectrum unbundling is crucial for the deployment of broadband services to the mass consumer market.⁵

A requirement by itself to offer the Line Sharing UNE is not sufficient to accomplish intended public policy objectives. "Even if line sharing is made available to competitive LECs, however, it will not promote competition unless it is priced in a way that permits competitive LECs to enjoy the same economies of scale and scope as the incumbent LECs."⁶ This is the touchstone against which the Authority should evaluate BellSouth's pricing proposals for Line Sharing.

The FCC has stated, in the context of Line Sharing, that "[w]e conclude that, in arbitration and in setting interim prices, states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."⁷ This requirement must be read in conjunction with section 253(c)(3) of the federal Act, which requires that ILECs provide "rates" that are "nondiscriminatory." Thus, in setting rates for the Line Sharing UNE, the Authority needs to compare proposed rates with the rates already established by BellSouth in its interstate ADSL tariffs. To date, BellSouth has refused to produce any cost studies to BlueStar or any other CLEC supporting its ADSL tariffs.

⁵ *Line Sharing Order* at ¶ 25.

⁶ *Id.* at ¶ 133.

⁷ *Id.* at ¶ 139.

In its ADSL tariffs filed with the FCC, BellSouth did not attribute any costs to the high frequency portion of a voice loop. Because BellSouth has imputed \$0 as the cost for the higher frequencies of the loop for their own xDSL services, therefore CLECs cannot be charged more than \$0 dollars for the Line Sharing UNE. Even BellSouth has acknowledged that no costs can be ascribed to the Line Sharing UNE, when it sought no cost for the loop portion in filings in the North Carolina UNE Cost docket. If BellSouth maintains a consistent position, it will again admit that the recurring loop cost for the Line Sharing UNE is zero. Like the FCC and BellSouth have already concluded, the Authority should recognize that the proper recurring loop cost is zero dollars.

BlueStar and Covad expect that BellSouth will propose significantly inflated costs for other items necessary to offer the Line Sharing UNE, such as the splitter and the cabling and wiring required to provide the Line Sharing UNE. Just like it sounds, the splitter is a passive piece of equipment that literally splits the data portion of the traffic and the voice portion of the traffic on a loop. The voice traffic is then routed to BellSouth's switch and the data traffic is routed to the collocation space of the data carrier. The cost of the splitter (its purchase, installation and maintenance) as well as the cost of related wiring and cabling must be carefully monitored by the Authority to ensure that the nonrecurring and recurring prices comply with TELRIC principles.

The Authority also must be leery of any costs for establishing or "modernizing" operational support systems ("OSS") for Line Sharing (and other xDSL-related UNEs and elements). In North Carolina, for example, BellSouth is attempting to recover an enormous

amount of money, approximately \$38 million, on a per line basis for “upgrading” BellSouth’s systems to enable BellSouth to meet its legal obligation to provide the Line Sharing UNE. In Georgia, BellSouth is seeking to recover for OSS upgrades by charging \$6.98 per line, per month. Although still unacceptable, Ameritech, by comparison, is seeking to recover only \$0.61 per line, per month for similar costs. BellSouth leads the field in inflating CLEC costs in an effort to drive CLECs from the market. Although Covad and BlueStar do not know if BellSouth will propose a similar, outrageous charge in Tennessee, it is significant that the Authority reject any such proposal. First, charging CLECs for an “upgrade” or “modernization” of an existing system is completely contrary to TELRIC principles. BellSouth can only charge rates based on the existence of a fully functional OSS. Second, BellSouth apparently has some type of OSS for its retail division, which has allowed BellSouth to provision DSL using line shared loop for over a year without passing on any upgrade costs to its own DSL customers.

Thus, BlueStar and Covad encourage the Authority to scrutinize carefully any and all OSS costs proposed by BellSouth for compliance with both nondiscrimination rules and TELRIC principles. In particular, BellSouth should be required to provide the Authority and CLECs detailed information about the nature of the proposed “upgrades” and the claimed cost of performing the upgrade and maintaining the systems.⁸

⁸ In a future proceeding, the Authority should explore the terms and conditions that govern the provisioning of the Line Sharing UNE in Tennessee, including the loop delivery interval, the splitter order and installment interval, and various other operations issues that will develop as CLECs scale their Line Sharing UNE orders to commercial levels.

B. Riser Cable and Network Terminating Wire Elements

Pursuant to the FCC's *UNE Remand Order*, BellSouth and the ILECs are required to unbundle subloops "where technically feasible."⁹ In particular, the FCC noted that "lack of unbundled access to the incumbent's subloops would preclude competitors from offering some broadband services."¹⁰ The riser cable and NTW elements are indisputably subloops that BellSouth must unbundle and offer at the same forward-looking, cost based TELRIC pricing standards as prices for any other UNE.

On occasion, BlueStar chooses to deploy a digital subscriber line access multiplexer ("DSLAM") in a multi-tenant building to provide DSL services to customers. In those instances, BlueStar needs to purchase access to a building's riser cable to serve customers. Placing a DSLAM in a building can help BlueStar by either enabling it to provide higher speed DSL service or by expanding the reach of its network. For example, BlueStar can provide DSL services to tenants in a building while it awaits collocation at a central office by locating a DSLAM in that building. BlueStar can also provide DSL services to customers whose buildings are beyond certain distances from a central office or served only by fiber by deploying an in-building DSLAM. BlueStar, however, has had tremendous difficulty obtaining nondiscriminatory and timely access to the riser cable element. In fact, BlueStar has been arbitrating this issue with BellSouth in multiple states, including Tennessee.

⁹ Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rule Making*, FCC 99-238 at ¶ 205 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

¹⁰ *Id.*

In addition to the provisioning delays, BellSouth seeks to impose on BlueStar unnecessary costs that are not TELRIC-based for obtaining access to riser cable. For example, BellSouth has demanded that BlueStar and other CLECs pay to install an access terminal, which is completely unnecessary, but is nonetheless required by BellSouth. Similarly, BellSouth has attempted to impose unnecessary “site survey” costs. These items must be priced using TELRIC principles in order to enable BlueStar and other CLECs to continue to serve a wide range of customers who want DSL. BlueStar and Covad propose that the Authority adopt as interim rates, subject to true up, the interim rates that BlueStar and BellSouth agreed to in an amendment resolving this issue in their arbitration in Kentucky. A copy of that amendment is attached as Exhibit A.

In establishing permanent rates, the Authority, as noted, needs to follow TELRIC pricing. Equally important, the Authority must look at BellSouth’s proposed pieces of the riser cable and NTW elements that go into the pricing. To promote competition and guarantee nondiscriminatory access, the Authority must eliminate all unnecessary charges, such as “site surveys” from any final rates.

III. THE AUTHORITY SHOULD SET INTERIM AND PERMANENT RATES FOR UNBUNDLED COPPER LOOPS, LOOP MAKE-UP INQUIRIES, AND LOOP CONDITIONING, WHICH ARE CRITICAL TO DEPLOYMENT OF DSL IN

A. Unbundled Copper Loops

To provide DSL services, BlueStar and Covad need access to unbundled loops. Rather than offer a simple copper loop, BellSouth has created a confusing array of multiple products with varying technical specifications and varying loop length limits. For example, industry

standards for an ADSL (Asymmetric Digital Subscriber Line -- the most popular type of consumer DSL) loop allow that loop to be provisioned up to 18,000 feet. In fact, BlueStar and Covad planned to use this loop for a significant portion of their service offerings in Tennessee and elsewhere. Despite this clear industry standard, BellSouth refused to sell ADSL loops longer than 12,000 feet. That meant that BlueStar and Covad would be unable to serve customers between 12,000 and 18,000 feet from a central office with their highest speed services.¹¹ It soon became clear why BellSouth imposed this false loop length limitation: BellSouth had a new, more expensive “loop product” to force on CLECs.

After depriving BlueStar and Covad of the opportunity to buy an 18,000 foot ADSL loop, BellSouth rolled out a new “product” called the unbundled copper loop (“UCL”). BellSouth promised that this loop would be all copper and would extend up to 18,000 feet. This new “UCL” loop price has never been reviewed by this Authority and the BellSouth charges are absurd. For example, while BellSouth’s ADSL loop rates in Tennessee were \$450 nonrecurring (which BellSouth lowered to \$270 in its December 1, 2000 cost studies), it was routinely charging BlueStar \$560 or more nonrecurring for UCLs. BellSouth only lowered the UCL rates it charges BlueStar to \$270 months later as part of an amendment executed during their Tennessee arbitration proceeding. Even lowering its UCL and ADSL/HDSL nonrecurring loop rates, BellSouth’s rates are still some of the highest in the country. For example, the Public Utility Commission of Texas ordered Southwestern Bell Telephone (“SWBT”) to provide Covad

¹¹ BellSouth has recently changed its ADSL loop definition so that it complies with the industry standard of 18,000 feet. Because BellSouth imposes additional restrictions on ADSL loops, Covad and BlueStar continue to order UCLs.

with an xDSL loop for a nonrecurring price of \$15.03. This is an interim price subject to true-up after SWBT develops a new cost study that fully complies with the federal pricing guidelines required by the FCC.¹² Similarly, Covad purchases xDSL capable loops throughout the Ameritech region for approximately \$33.00, nonrecurring. Thus, the current prices charged by BellSouth in Tennessee for xDSL loops such as the UCL are as much as 8 to 18 times higher than those loop prices in other regions. BellSouth realizes that these high nonrecurring rates provide a huge barrier to entry for competitors because these excessive upfront charges may take years for competitive carriers to recover.

These rate issues highlight a more fundamental issue. To provide DSL, CLECs simply need a “clean” copper loop – that is, a loop without electronic devices and other disturbers such as load coils and bridged taps. Fundamentally, a copper loop for xDSL services is no different than a copper loop for analog voice services (other than the absence of disturbers). BellSouth should not be able to charge more for an xDSL-compatible loop such as a UCL than it can charge for a 2-wire analog voice-grade loop. For this reason, BlueStar and Covad request that the Authority set interim rates for the UCL at the rate for the 2-wire analog voice-grade loop, subject to true-up, until permanent prices are set at the conclusion of this docket.

B. Reasonable Rates for Loop Conditioning

xDSL capable loops must be free of load coils, bridged taps and certain other electronic impediments in order to support xDSL technologies to their full potential. Thus, in some cases, BellSouth may have to remove these impediments from the loop in the course of provisioning

¹² Petition of Rhythms Link Inc. and Covad Communications for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Dockets No. 20226 et al., Arbitration

the loop for BlueStar's or Covad's DSL services. Every day BellSouth performs this conditioning work as a part of the maintenance and provisioning of its outside plant facilities. Nonetheless, BellSouth has attempted to charge CLECs exorbitant costs, as high as \$775 per loop to remove load coils and as high as \$485 per loop to remove bridged taps. These nonrecurring costs are in addition to the routine nonrecurring costs that BellSouth charges per loop. These charges are extremely detrimental to competition because they pose enormous barriers to entry for new competitors.

Federal law requires that ILEC charges for the removal of xDSL impediments must comport with FCC's mandate of TELRIC pricing principles. While deferring to state commissions on the actual setting of the TELRIC-based conditioning rates, the FCC nonetheless cautioned that, "[t]he charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these costs may constitute a barrier to offering xDSL services."¹³ The FCC also emphasizes that "Incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. Until BellSouth has nondiscriminatory conditioning rates approved by the Authority, BellSouth will continue to hinder the deployment of advanced services in Tennessee by forcing CLECs to pay enormously inflated rates for unbundled loops, as well as the high conditioning prices on these loops. The enormity of the conditioning charges imposed by BellSouth is evidence that the charges are not based on forward-looking TELRIC principles. In effect, BellSouth in Tennessee

Award at 11 (Nov. 30, 1999), affirmed by Order Approving Interconnection Agreements (Feb. 7, 2000).

¹³ *UNE Remand Order* at ¶ 194.

has devised a pricing scheme, without the Authority's oversight, that allows them to assess CLECs hundreds (if not more than a thousand) of dollars for a single cooper loop under the guise of conditioning charges. In a true forward-looking network, conditioning would not be required on a loop because these devices would never be placed on a loop in the first instance. Therefore, BellSouth should not be able to charge CLECs for conditioning. As part of this docket, the Authority should review BellSouth's conditioning charges and set interim and permanent TELRIC-based charges in compliance with federal law. BlueStar and Covad request that the Authority set the interim price for conditioning at zero, subject to true-up, until permanent prices, if any, are set at the conclusion of this proceeding.

C. Access to Loop Make-Up Information

In addition to electronic ordering and provisioning interfaces, BellSouth is obligated to provide Covad and BlueStar with the same detailed information about the loop that is available to itself, so that Covad and BlueStar can make an independent judgment about whether the loop is capable of supporting advanced services, such as DSL equipment.¹⁴ For example, BellSouth must provide Covad and BlueStar with information about, among other things, the composition of the loop (fiber or copper), the existence and location of electronics on the loop, including digital loop carrier systems ("DLC"), the loop length, the wire gauge, and the electronic parameters of the loop.

Because BellSouth does not provide Covad and BlueStar with access to loop qualification information electronically before either orders a loop, both companies are forced to go through a circuitous route to learn if they can provide an end user with service. First, both companies have

¹⁴ *Id.* at ¶ 427.

to order a loop from BellSouth and wait the “targeted” response time of 5-7 days. The response generally provides the first information for Covad and BlueStar about the length of the loop, the existence of electronics on the line, and existence of facilities at a certain location. Many times the length of the loop or presence of electronics on the line require Covad and BlueStar to cancel the first order and submit a second order for a different loop and again wait the 5-7 days for a response. This is a huge customer service issue for both BlueStar and Covad since both companies want to be able to tell their customers, at the time of the order, what speed service they will be able to offer, if they can offer service at all. Furthermore, access to this information enables both companies to make reasonable business decisions about how to best market their services.

To comply with the UNE Remand Order, BellSouth has promised that it will make electronic access to loop make-up available in July 2000, but we are frankly doubtful that full, electronic access will be available at that time. BellSouth has recently proposed a manual loop make-up service that would provide information in 5-7 business days at a cost of \$233.00 per inquiry. BlueStar has negotiated this price down to \$100, but that charge still does not comply with TELRIC principles. BlueStar and Covad respectfully request that the Authority set the interim price for manual and electronic loop make-up inquiries at zero, subject to true-up, at the conclusion of this docket when permanent prices are set.

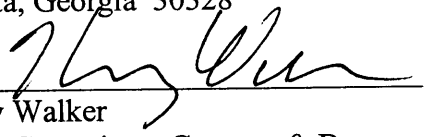
IV. CONCLUSION

BlueStar and Covad urge the Authority to adopt interim and permanent rates for the Line Sharing UNE and the riser cable and NTW elements. In addition, BlueStar and Covad urge the Authority to expand the docket to include interim and permanent rates for UCLs, loop make-up inquiries and loop conditioning in compliance with federal pricing principles. Without reasonable rates for DSL UNEs, Tennessee may find itself lagging behind the rest of the country in expansion of e-commerce and technology.

Respectfully submitted,

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Counsel for BlueStar Communications and
Covad Communications Co.

**AMENDMENT TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND BELL SOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Kentucky)**

Pursuant to this Amendment, BlueStar Networks, Inc. ("BlueStar") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" or collectively as the "Parties," hereby amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement") in the state of Florida.

WHEREAS, the Parties entered into an Interconnection Agreement on December 28, 1999; and

WHEREAS, the Parties desire to amend that Interconnection Agreement.

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Attachment 2, Section 2.5 of the Interconnection Agreement entered into between the Parties, is hereby deleted in its entirety and replaced with the following language:

2.5 Sub-loop Elements

2.5.1 Where facilities permit and subject to applicable and effective FCC rules and orders, BellSouth shall offer access to its Unbundled Sub Loop (USL), Unbundled Subloop Concentration (USLC) System and Unbundled Network Terminating Wire (UNTW) elements. BellSouth shall provide non-discriminatory access, in accordance with 51.311 and section 251 (c) (3) of the Act, to the subloop, on an unbundled basis and pursuant to the following terms and conditions and the rates approved by the Commission and set forth in this Attachment. Until such time as rates for Sub Loop elements have been approved by the Commission, BlueStar shall pay to BellSouth interim cost-based rates established by BellSouth, such rates to be subject to true-up in accordance with Section 2.5.7 of this Attachment.

2.5.2 Subloop components include but are not limited to the following:

2.5.2.1 Unbundled Sub-Loop Distribution;

- 2.5.2.2.1 Unbundled Sub-Loop Concentration/Multiplexing Functionality; and
- 2.5.2.3 Unbundled Network Terminating Wire; and
- 2.5.2.4 Unbundled Sub-Loop Feeder.
- 2.5.3 Unbundled Sub-Loop (distribution facilities)
 - 2.5.3.1 Definition
 - 2.5.3.2 Subject to applicable and effective FCC rules and orders, the unbundled sub-loop distribution facility is a dedicated transmission facility that BellSouth provides from an end-user's point of demarcation to a BellSouth cross-connect device. The BellSouth cross-connect device may be located within a remote terminal (RT) or a stand-alone cross-box in the field or in the equipment room of a building. There are two offerings available for Unbundled Sub-Loops (USL):
 - 2.5.3.3 Unbundled Sub-Loop Distribution (USL-D) will include the sub-loop facility from the cross-connect device in the field up to and including the point of demarcation.
 - 2.5.3.4 BellSouth will also provide sub-loop interconnection to the intrabuilding network cable (INC) (riser cable). INC is part of BellSouth's loop facilities and is the distribution facility inside a multi-tenant building or between buildings on the same premises (continuous property not separated by a public street or road). USL-INC (riser cable) will include the facility from the cross-connect device in the building equipment room up to and including the point of demarcation.
 - 2.5.4 Requirements for Unbundled Sub-Loop Distribution Facilities
 - 2.5.4.1 Unbundled Sub-Loop distribution facilities are part of BellSouth's loop facilities and were originally built as part of the entire voice grade loop from the BellSouth central office to the customer demarcation point. Therefore, the Unbundled Sub-Loop may have load coils which are necessary for transmission of voice grade services. The Unbundled Sub-Loops will be provided in accordance with technical reference TR73600.

2.5.4.2 USL distribution facilities shall support functions associated with provisioning, maintenance and testing of the Unbundled Sub-Loop. In a scenario that involves connection at a BellSouth cross-connect device located in the field, BlueStar would be required to deliver a cable to the BellSouth cross-connect device to provide connectivity to BlueStar's feeder facilities. This cable will be connected, by a BellSouth technician, to a cross-connect panel within the BellSouth cross-connect device. BlueStar's cable pairs can then be connected to BellSouth's USL within the BellSouth cross-connect device by the BellSouth technician.

In a scenario that requires connection in a building equipment room for access to USL-INC, BellSouth will install a 25-pair Connecting Block on which the requested sub-loops will be connected. BlueStar's cable pairs can then be connected to the Unbundled Sub-Loop-INC pairs on this 25-pair Connecting Block.

2.5.4.3 BellSouth will provide Unbundled Sub-Loops where possible. Through the firm order Service Inquiry (SI) process, BellSouth will determine if it is feasible to place the required facilities where BlueStar has requested access to Unbundled Sub-Loops. If existing capacity is sufficient to meet the BlueStar's demand, then BellSouth will perform the set-up work as described in the next section 2.5.4.4. If any work must be done to modify existing BellSouth facilities or add new facilities (other than installing the access terminal as noted in 2.5.4.2) to accommodate BlueStar's request for Unbundled Sub-Loops, BellSouth will use its Special Construction (SC) process to determine the additional costs required to provision the Unbundled Sub-Loops. BlueStar will then have the option of paying the one-time SC charge to modify the facilities to meet BlueStar's request.

2.5.4.4 During the initial set-up in a BellSouth cross-connect device in the field, the BellSouth technician will perform the necessary work to splice the BlueStar's cable into the cross-connect device. For the set-up inside a building equipment room, BellSouth will perform the necessary work to install the 25-pair Connecting Block that will be used to provide access to the requested USLs. Once the set-up is complete, the sub-loop pairs requested by BlueStar will be provisioned through the service order process based on the submission of a LSR to the LCSC.

2.5.5 Interface Requirements

2.5.5.1 Unbundled Sub-Loop shall be equal to or better than each of the applicable interface requirements set forth in the following technical reference:

2.5.5.1.1 BellSouth Technical Reference, TR73600

2.5.6 RATES

2.5.6.1 The following rates for Intrabuilding Network Cable (INC) (riser cable) are interim rates based on interim Florida UNTW rates and are subject to true-up, pending completion of USL cost study.

Intrabuilding Network Cable (INC) - Riser Cable	USOC	Kentucky Rates*
Unbundled NTW, recurring		\$0.6011
NTW Site Visit - Set up, per Terminal, - first		\$39.43
- add'l		\$36.42
NTW Access Terminal Provisioning including first 25 pair panel, per terminal		\$101.09 (1 st) \$100.25 (add'l)
NTW Existing Access Terminal Provisioning, 2 nd 25 pair panel, per terminal		\$29.75 (1 st) \$28.90 (add'l)
NTW Pair Provisioning, per pair		\$4.48 (1 st) \$3.64 (add'l)
NTW Service Visit, Per Request, per MDU/MTU Complex		\$21.18

*Interim rates subject to true-up once riser cable cost studies are completed.

2. This Amendment shall have an effective date of May 9, 2000.
3. All other provisions of the Interconnection Agreement dated December 28, 1999 shall remain in full force and effect.
4. Either or both of the Parties shall submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 30 day of June, 2000.

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